

Response to Amendment

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 08/27/2009 has been entered.

Claims 8, 10-12, 20-25, 27-30, are pending for examination. Claims 8, 20 and 25 have been amended. Claims 1-7, 9, 13-19 26 and 31-36 have been canceled.

Telephone Interview

A telephone interview has been conducted between Applicant's representative (Mr. Joseph F. Oriti) and the examiner (Susan Chen) on Dec. 14, 2009. Applicant representative briefly discussed a proposed amendment of claim 8 to the examiner and indicated he will refine other claims to reflect the novelty of instant invention. After carefully review the proposed claim 8, the examiner indicated that the proposed amendment for claim 8 still can't reflect the features of instant invention, thus, she suggested applicant representative to further refine the claims. However, there is no

Art Unit: 2161

subsequent response about the examiner suggestions from the attorney thus the office action given here is based on the amendment filed on 08/27/2009.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 8, 20 and 25, are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 7 and 15 of U.S. Patent No. 7,475,093. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

claims 8, 20 and 25 of instant application merely repeat features of claims 1, 7 and 15 in the '093 patent, except that the instant application cited storing and validating XML instants in a broader scope.

Art Unit: 2161

However, it is obvious for an ordinary skilled person in the art at the time the invention was made to remove limitations from the claims for the purpose to extend a more broader intentional usage for his/hers invention.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 8, 10-12, 20-25, 27-30, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claims 8, 20, 25, it is not understood what does it meant by "associating the column with the container with a specific name space URI to ensure that the XML instance stored in the column and any other XML schema namespace URIs in the container" (i.e., the instant application claims a plurality of XML instances and URIs, which one is the claimed specific name space URI? Which one of the claimed XML instance was ensured? What technique was used by the instant invention to ensure the claimed XML instance?) In addition, the instant applicant seemed try to type an un-type or re-typed XML data instant created by a SQL redefine function with "anyURI" parameters, why this important function was not recited in the claim? Moreover, the instant specification seemed try to create XML schema collection object as container before the storing of the claimed XML schema instance such that every URIs associated with the XML schema instances were binding to a specific XML schema

Art Unit: 2161

scope for facilitating the XML schema validation. Why these important features are missing from the claims?

As to claims 10-12, 21-24 and 27-30, these claims have the same defects as their base claims, hence, are rejected for the same reason.

Due to the ambiguity of the claims, a sufficient prior art rejection could not be generated. The applicants are requested to restructure the claims to comply with 35 USC 112 second paragraph, in order to allow the examiner to determine exactly what the applicants are attempting to claim and invent.

Conclusion

To expedite the process of re-examination, the examiner requests that all future correspondences in regard to overcoming prior art rejections or other issues set forth by the Examiner prior to the office action, that applicant should provide and link to the most specific page and line numbers of the disclosure where best support is found (see 35 U.S.C. 132).

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Arora et al. (U.S. Patent No. 7,346,598) which disclosed schemaless dataflow within an XML storage solution.

Points of Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SUSAN Y. CHEN whose telephone number is (571)272-4016. The examiner can normally be reached on Monday - Friday from 7:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mofiz Apu can be reached on 571-272-4080. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Susan Y Chen/
Partial Sig. Examiner
Art Unit 2161

December 16, 2009